

*Application No.: 10/676,003  
Art Unit: 3636*

*Attorney Docket No. 22188.00  
Confirmation No. 7809*

## **REMARKS**

By the present amendment, Applicant has amended Claim 1, canceled Claims 6, 7, 17 and 19, and added Claim 20. Claims 1-5, 8-16, 18 and 20 remain pending in the present application. Claims 1 and 20 are independent claims.

Applicant appreciates the courtesy extended to Applicant's representative during the personal interview held on July 16, 2004. The present response summarizes the substance of the interview. At the interview, proposed Claim 1 was presented for discussion. Proposed Claim 1 set forth a stool with leg supports having a top formed by a circular platform and a cushion affixed to a top surface of the platform. The proposed claimed stool defined three legs depending from the post with padding material disposed around the post; and a shoe attached to the bottom of each leg. Proposed Claim 1 further specified that the shoes are spaced 120 degrees apart. Applicant's representative pointed out that the primary reference, McDowell, discloses a stool having only two legs while the proposed claim requires three legs. Applicant's representative also pointed out that the three-legged stool of the present invention provides more stability than the stool disclosed in McDowell. Applicant's representative further argued that the structure for connecting the circular platform to the legs of the stool of the present invention differs from the mechanism used in McDowell and also provides more stability for the stool. The Examiner suggested including additional structural features to the proposed claim to defined over the prior art.

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In the recent Office Action the Examiner rejected Claims 1, 2, 5, 7-10 and 12-19 under 35 U.S.C. § 103(a) as being unpatentable over McDowell in view of Tse. Claim 3 was rejected under 35 U.S.C. § 103(a) as being unpatentable over McDowell in view of Tse, and further in view of Wehrmann et al. Claim 4 was rejected under 35 U.S.C. § 103(a) as being unpatentable over McDowell in view of Tse, and further in view of Elsbury. Claim 6 is rejected under 35 U.S.C. § 103(a) as being unpatentable over McDowell in view of Tse, and further in view of JP 02002300980. Claim 11 is rejected under 35 U.S.C. § 103(a) as being unpatentable over McDowell in view of Tse, and further in view of Cheetham.

The claims in this application have been revised to more particularly define applicants' unique construction in view of the prior art of record. Reconsideration of the claims in light of the amendments and for the following reasons is respectfully requested.

Independent Claim 1, as presently amended, is directed towards a stool comprising a top that includes a circular platform having a top surface and a bottom surface with a cushion affixed to top surface of the platform. The presently claimed stool further includes three metal brackets affixed to the bottom surface of the platform and three legs depending from the platform in alignment with the three metal brackets. Each the said leg includes a rigid post and padding material disposed around the post and has a top end and a bottom end, with the top end of each post being affixed to the bottom surface of the platform by a hanger bolt connected to each of the metal brackets. A shoe attached is to the bottom end of each of the legs, and each said shoe is equally spaced apart from each other by about 120 degrees.

New independent Claim 20 is directed towards a stool with leg supports having a top that is formed by a rectangular platform with a cushion affixed to the top surface of the platform. The presently claimed stool further includes four metal brackets affixed to the bottom surface of the platform and four legs depending from the platform in alignment with the metal brackets. Each of the legs includes a rigid post and padding material disposed around the post, with the top end of each post being affixed to the bottom surface of the platform by a hanger bolt connected to each of the metal brackets, and a shoe being attached to the bottom end of each of the legs.

Applicant respectfully submits that the present invention differs from the stool disclosed in McDowell. First, The presently claimed invention employs a metal bracket affixed to the bottom surface of the platform and a hanger bolt to connect the top end of each leg to the metal bracket. As discussed on page 5, lines 20-23, the metal brackets are also necessary for providing greater stability to the present invention. Applicant notes that McDowell does not teach or suggest a hanger bolt or a metal bracket for connecting the legs to the platform. McDowell instead discloses a screw which extends through the platform and attaches to the top of each leg.

Second, Applicant respectfully points out that McDowell discloses a stool having a seat supported by a pair of legs which resemble a pair of human legs provided with shoes. In contrast to the two-legged stool of McDowell, the presently claimed invention must have at least three legs. As the Examiner points out, adding a third leg would provide greater stability to the stool in McDowell. However, there is no teaching or suggestion to modify McDowell to achieve greater than two legs. In fact, McDowell teaches

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away from such a modification. The principal object of McDowell is to provide a two-legged and two-footed stool with legs dressed to resemble stockinginged human legs. See Col.1, lines 22-25. Consequently, modifying McDowell to arrive at a stool with three or more legs would defeat McDowell's objective of providing a stool having two human-like legs.

As McDowell teaches away from the present invention, there is also no motivation to combine McDowell with the secondary references cited or made of record by the Examiner in order to arrive at the present invention. Applicant notes that obviousness cannot be shown by combining the teachings of the prior art unless there is some teaching or incentive supporting the combination. *ACS Hospital Systems, Inc. v. Montefiore Hospital*, 732 F.2d 1572, 1577, 221 USPQ 929, 933 (Fed. Cir. 1984); *In re Geiger*, 815 F.2d at 688, 2 USPQ2d at 1278 (Fed. Cir. 1987). Further, the Federal Circuit in *In re Dembiczaik*, 175 F.3rd 994, 50 USPQ2d 1614 (Fed.Cir. 1999) deprecated rejections based upon "a hindsight-based obviousness analysis" and emphasized that what is required is a "rigorous application of the requirement for a showing of the teaching or motivation to combine prior art references." The Court said that "the showing must be clear and particular" and that broad conclusory statements regarding the teaching of multiple references and "a mere discussion of the ways that the multiple prior art references can be combined to read on the claimed invention" is inadequate. Absent an explicit suggestion or teaching of the combination in the prior art references, there must be "specific...findings concerning the identification of the relevant art, the level of ordinary skill in the art, the nature of the problem to be solved, or any other factual findings that might serve to support a proper obviousness analysis".

As this court has stated, "virtually all [inventions] are combinations of old elements." (*citations omitted*). ("Most, if not all, inventions are combinations and mostly of old elements."). Therefore an examiner may often find every element of a claimed invention in the prior art. If identification of each claimed element in the prior art were sufficient to negate patentability, very few patents would ever issue. Furthermore, rejecting patents solely by finding prior art corollaries for the claimed elements would permit an examiner to use the claimed invention itself as a blueprint for piecing together elements in the prior art to defeat the patentability of the claimed invention. Such an approach would be "an illogical and inappropriate process by which to determine patentability." *Sensoronics, Inc. v. Aerisonic Corp.*, 81 F.3rd 1566, 1570, 38 USPQ2d 1551, 1554 (Fed. Cir. 1996).

To prevent the use of hindsight based on the invention to defeat patentability of the invention, this court requires the examiner to show a motivation to combine the references that create the case of obviousness. In other words, the examiner must show reasons that the skilled artisan, confronted with the same problems as the inventor and with no knowledge of the claimed invention, would select the elements from the cited prior art references for combination in the manner claimed. (*Emphasis added*).

*In re Rouffet*, 47 USPQ2d 1453 (Fed. Cir. 1998) at 1457-58.

Applicant contends that one skilled in the art would not be motivated to combine the references in the manner suggested by the Examiner. Applicant further contends that even if the references were properly combinable, the above noted deficiencies of the primary reference to McDowell are not remedied by the teachings afforded by the secondary references. Thus, one of ordinary skill in the art without the benefit of Applicant's own disclosure would not be capable of arriving at the presently claimed invention by combining the references in the manner suggested by the Examiner since none of references cited or applied of record realistically suggests the essential combination of features that forms the basis of the

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claims.. For at least these reasons, Applicant respectfully submits that newly presented independent Claims 1 and 7 and corresponding dependent Claims 2-5, 8-16, 18 and 20 are allowable over the prior art of record.

For the foregoing reasons, Applicant respectfully submits that the present application is in condition for allowance. If such is not the case, the Examiner is requested to kindly contact the undersigned in an effort to satisfactorily conclude the prosecution of this application.

Respectfully submitted,



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